

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
 Washington, D. C. 20554

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 FCC - MAILROOM

In the matter of )  
 Amendment of Section 73.202 (b), ) MB Docket No. 03-155  
 FM Broadcast Stations ) RM-10735  
 (Montauk, New York) )

**Reply Comments of Petitioner**

To the Chief, Allocations Branch:

1. Dana J. Puopolo ("Petitioner") respectfully submits his Reply Comments in the above captioned proceeding. The Commission has proposed to allot FM channel 261A to Montauk, New York as that community's third local service. Comments seeking the dismissal of this proceeding have been filed by AAA Entertainment Licensing LLC ("AAA") and CXR Holdings, Inc. ("CXR").
2. Both AAA and CXR claim that petitioner would be unable to identify a transmitter site which meets minimum distance separation requirements. For many years, the Commission has allowed rounding to the nearest kilometer in allotment proceedings. AAA now apparently seeks to change this long term policy. AAA claims that by strictly interpreting the Commission's rules any transmitter site for this allotment would fall within the Montauk Point State Park. In his petition for rulemaking, petitioner used reference coordinates located on privately owned land and also provided a map which shows the area where channel 261A would meet minimum distance separation requirements. That map clearly shows there is land outside the park in question that is potentially available for use as a transmitter site.
3. AAA has also used the example of *Radio Hyannis, Inc.*, which has no relevance to this proceeding. In the Radio Hyannis situation, they wished to put their transmitter site upon an uninhabited island miles offshore of Cape Cod, MA that had no electrical power or other services. In *Radio Hyannis*, AAA contended that: "The site is almost inaccessible, unprotected from severe weather, on an island shrinking in size". Clearly this is not the case here. Long Island is well developed, with highways, streets and electrical power. Millions of people inhabit Long Island's two counties and dozens of cities and towns.
4. Next, AAA attempts to use *San Clemente, California*. *San Clemente* proposed a tower within an active Military (Marine) base, clearly a location that would not be available for private use as a transmitter site. That case has no relevance here, as petitioner has demonstrated that there is privately owned land available which potentially could be used as a transmitter site.
5. Finally, in footnote 4 of their comments, AAA claims that the reference coordinates specified in the original rulemaking petition are: "Actually only 112.48 km from the licensed transmitter site of WEZN-FM. That rounds off to 112 km as the nearest whole number" (emphasis added). Notwithstanding their wishes stated in paragraph # 2, here AAA agrees rounding is part of routine Commission policy. In the *Notice of Proposed Rulemaking*, the Commission stated: "Each proposal warrants consideration because it complies with our technical requirements and would serve the public interest". By this statement, the Commission has acknowledged that channel 261A at Montauk has passed technical muster. When you consider the area channel 261A fits within (as shown in petitioner's area to locate map), it becomes apparent that finding a potential transmitter site for this allotment is not difficult.

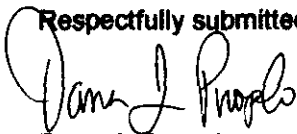
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7. CXR has provided a more accurate map which correctly identifies the land where a channel 261A transmitter site would meet minimum distance separation requirements. Their main complaint is that: "only 650 acres" are available within this area and in *their opinion* (emphasis added), only 68 of these acres are outside a state or local park. Again, petitioner states that he can find a potential transmitter site which meets all minimum distance separation requirements. They further attempt to use the claim that they have: "Talked to the owner of the land upon which the reference coordinates lie by telephone and determined he would not allow a tower there". Long standing Commission policy clearly shows that a reference coordinate is just that: a spot on a map which proves that all distance separation/city grade coverage requirements can be met. In this case, petitioner not only provided the Commission with reference coordinates, but also an area to locate map, within which CXR admits there is a large area (they claim "only" 68 acres, but petitioner believes it is much more) where a transmitter could potentially be located. At the allotment stage, the Commission does not require a petitioner to prove that the land under the reference coordinates is actually available to build a transmitter site. Indeed, many rulemaking petitions use city reference coordinates to show that a potential allotment meets these minimum distance separation requirements. Using CXR's logic, these petitioners would have to prove that they are actually able to build tall towers atop the community's main Post Office, an absurd requirement.

8. For the reasons stated above, petitioner respectfully requests the Commission allot FM channel 261A to Montauk, NY as originally proposed. Neither AAA nor CXI have rebutted the presumption that a technically feasible site is available for channel 261A at Montauk. If the Commission does so, and his application for a construction permit is granted, petitioner will quickly build the proposed station and Montauk will enjoy a truly local radio station.

9. Petitioner hereby verifies and affirms that the statements given within these Reply Comments are his, and are accurate to the best of his knowledge.

Respectfully submitted,



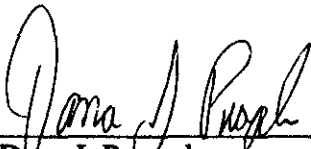
Dana J. Puopolo  
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September 1, 2003

**CERTIFICATE OF SERVICE**

I, Dana J. Puopolo, do hereby certify that I have on this second day of September, 2003 mailed by first class mail, postage prepaid, a copy of "Reply Comments of Petitioner" to the following:

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Dana J. Puopolo